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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

LONNY TETER,

Plaintiff and Appellant,

v.

COUNTY OF LAKE,

Defendant and Respondent.

A148642

(Lake County  
Super. Ct. No. CV41563)

On September 12, 2013, Lonny Teter was transported from the custody of the Lake County Sheriff's Office (Sheriff) to the California Department of Corrections and Rehabilitation facility at San Quentin. At some point during or preceding this transfer, Teter's partial dental plate went missing from his property. On November 24, 2014, Teter lodged a grievance with the Sheriff over this loss. His April 2015 claim for damages (Gov. Code, §§ 905, 911.2)<sup>1</sup> was rejected by Lake County (County) as untimely. Teter's subsequent request for leave to file a late claim was also rejected by the County as untimely. (§ 911.4.) Teter petitioned the Lake County Superior Court for relief from the late filings. (§ 946.6.) The court denied and dismissed the petition, finding no jurisdiction to grant it, and denied Teter's motion to vacate the resulting judgment. Teter appeals. We affirm.

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<sup>1</sup> Undesignated statutory references are to the Government Code.

## **I. BACKGROUND AND PROCEDURAL HISTORY<sup>2</sup>**

On July 20, 2015, Teter filed his superior court “Petition Seeking Relief From the Claims Presentation Requirements of Govt. Code § 945.4.” Attached to the petition were several exhibits chronicling the history of his claim. A copy of a November 24, 2014 handwritten letter<sup>3</sup> from Teter to the Sheriff purported to file a “grievance” against the Sheriff for loss of Teter’s partial dental plate (a “two tooth upper left side moller [*sic*] plate”), which Teter said was taken from him in the County jail on approximately April 1, 2013. Teter’s personal property was not returned to him until he was transported, after plea and sentence, to San Quentin prison on September 12, 2013. Crossed out was a statement that the plate was not in his property at San Quentin, and interlineated was the statement, “I had not noticed the personal property until I arrive[d] at [the California Medical Facility at Vacaville].” In a December 8, 2014 memorandum, the Sheriff denied responsibility for loss of Teter’s dental plate and noted that Teter had not notified the Sheriff of the loss “until September of 2014.”

On approximately April 1, 2015, Teter filed a claim for damages with the County.<sup>4</sup> He alleged the lost property value was \$800, the incident date was “Approx. April 3, 2013,” and the date he discovered his loss was “Sept. 14, 2013.” On May 4, 2015, the County sent Teter a “Return of Untimely Claim.” Citing sections 901 and 911.2, the County stated the claim was not timely because it was not presented within six months of

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<sup>2</sup> The case was decided entirely on Teter’s unverified pro se pleadings. For purposes of our discussion only, we assume the truth of Teter’s pleading allegations to the extent not internally inconsistent.

<sup>3</sup> The letter bears a handwritten date of November 24, 2014, but above the numeral 4 in the year, the number 3 is written in. Teter’s unsworn memorandum of points and authorities in support of his petition states that he filed an inmate grievance with the Sheriff on “11-24-13.” Teter’s letter, however, states that his letter was his “second attempt” and that “the first was approx. Sept 2014 . . . .” From the content and context of the letter, and from the Sheriff’s reply date, the letter was sent in 2014.

<sup>4</sup> While date stamps appearing on the document are not clear as to whether the claim was received on April 1 or April 3, 2015, it makes no difference to our analysis.

the event or occurrence.<sup>5</sup> On May 19, 2015, Teter submitted a handwritten request for leave to file a late claim “pursuant to Govt. Code 911.4 to 912.2 and Section 946.6” (Application). Teter said his claim was late due to transfers between Department of Correction and Rehabilitation facilities in November and December 2013, and hospitalization and treatment for various medical conditions after February 2014. The outside claims administrator for the County responded by letter of June 1, 2015, advising Teter that his Application would also be denied as untimely, as it was filed more than one year after accrual of his cause of action (§ 911.4, subd. (b)).<sup>6</sup>

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<sup>5</sup> Although not discussed by the parties, we note the form of notice utilized by the County fails to include all of the exemplar elements specified in section 911.3, subdivision (a). Failure to give notice substantially as specified in section 911.3, subdivision (a), may result in a waiver by a public entity of “[a]ny defense as to the time limit for presenting a claim” in the event the claimant files suit. (§ 911.3, subd. (b); *Phillips v. Desert Hospital Dist.* (1989) 49 Cal.3d 699, 711.) It may also result in an extension of the limitations period within which to file an action to “within two years from the accrual of the cause of action.” (§ 945.6, subd. (a)(2).) There is no indication that Teter ever filed an action for damages although he remained able to do so. (*Mandjik v. Eden Township Hospital Dist.* (1992) 4 Cal.App.4th 1488, 1499; *Ngo v. County of Los Angeles* (1989) 207 Cal.App.3d 946, 951–952; *Rason v. Santa Barbara City Housing Authority* (1988) 201 Cal.App.3d 817, 828 [“the cautious claimant who wishes to preserve both issues of timeliness and of excusable lateness must file a complaint in court and a section 911.4 application with the public entity].) Since Teter submitted his Application within days of the County’s denial of his claim, we find any omissions in the notice irrelevant to the narrow issue before us.

<sup>6</sup> Section 911.4 provides in relevant part: “(a) When a claim that is required by Section 911.2 to be presented not later than six months after the accrual of the cause of action is not presented within that time, a written application may be made to the public entity for leave to present that claim. [¶] (b) The application shall be presented to the public entity as provided in Article 2 (commencing with Section 915) within a reasonable time *not to exceed one year* after the accrual of the cause of action and shall state the reason for the delay in presenting the claim. The proposed claim shall be attached to the application.” (Italics added.)

The County did not respond to Teter's petition.<sup>7</sup> On December 7, 2015, Teter filed "Petitioner's Request to Grant the Uncontested Petition," and he attached a proof of service by mail only on the County's outside claims administrator.

A case management conference was scheduled for January 11, 2016, but was continued at Teter's request to February 8. Teter was unable to call the court from the Vacaville medical facility, and the County did not appear. On April 1, 2016, the trial court filed a written order denying the petition and dismissing the action. The court noted there was no proof the petition had been served on the County and no response had been filed. Based on the allegations of Teter's pleadings,<sup>8</sup> the court found Teter's cause of action would have accrued no later than September 13, 2013. His April 1, 2015 claim submitted to the County was therefore untimely under section 911.2.<sup>9</sup> Teter's May 19, 2015 Application to submit a late claim was untimely, having been filed more than one year after accrual of the cause of action. Finding its own jurisdiction circumscribed under section 946.6, the trial court found Teter's failure to timely file his Application made relief unavailable and precluded the court from considering whether timely filing of his claim was excused.<sup>10</sup>

On May 11, 2016, Teter filed a motion to vacate judgment, contending the court had dismissed the matter for failure to provide a proof of service on his petition. Teter attached a proof of service on the claims administrator.<sup>11</sup> The court denied the motion on

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<sup>7</sup> As we discuss *post*, it is not clear if the County was served with the petition prior to the court's ruling on it.

<sup>8</sup> "The court shall make an independent determination upon the petition. The determination shall be made upon the basis of the petition, any affidavits in support of or in opposition to the petition, and any additional evidence received at the hearing on the petition." (§ 946.6, subd. (e).)

<sup>9</sup> "A claim relating to a cause of action . . . for injury . . . to personal property . . . shall be presented as provided in Article 2 (commencing with Section 915) not later than six months after the accrual of the cause of action." (§ 911.2, subd. (a).)

<sup>10</sup> The court further rejected a collateral estoppel argument raised by Teter.

<sup>11</sup> The May 4, 2015 rejection letter from the claims administrator recited that it was "an authorized agent for the [County]." A proof of service of the petition on

May 26, 2016, clarifying that its prior order was “primarily based on the statutory claim time limits with which [Teter] failed to comply.”

## II. DISCUSSION

An order denying a claim-relief petition is appealable. (*Santee v. Santa Clara County Office of Education* (1990) 220 Cal.App.3d 702, 710–711.) We review for abuse of discretion. (*J.J. v. County of San Diego* (2014) 223 Cal.App.4th 1214, 1220–1221.)

A plaintiff generally may not maintain an action for money or damages against a public entity unless first presenting a claim to the entity within six months of the date of accrual of the cause of action. (§§ 911.2, 945.4; *Dalton v. East Bay Mun. Utility Dist.* (1993) 18 Cal.App.4th 1566, 1571.) The date of accrual is “the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable thereto if there were no requirement that a claim be presented to and be acted upon by the public entity before an action could be commenced thereon.” (§ 901.) “ ‘The claim presentation requirement serves several purposes: (1) it gives the public entity prompt notice of a claim so it can investigate the strengths and weaknesses of the claim while the evidence is still fresh and the witnesses are available; (2) it affords opportunity for amicable adjustment, thereby avoiding expenditure of public funds in needless litigation; and (3) it informs the public entity of potential liability so it can better prepare for the upcoming fiscal year. [Citations.] [¶] . . . [¶] [I]f the injured party fails to file a timely claim, a written application may be made to the public entity for leave to present such claim. ( . . . § 911.4, subd. (a).) If the public entity denies the application, . . . section 946.6 authorizes the injured party to petition the court for relief from the claim requirements.’ [Citation.] [¶] A petition under section 946.6 must be granted by the court if the claimant demonstrates by a preponderance of the evidence that the section 911.4 application to the public entity was made within a reasonable period of time, not to exceed one year after the accrual of the cause of action,

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County’s counsel dated May 24, 2016, is also in the record. Whether service on the claims administrator constituted service on the County is not material to the issue before us.

and also proves that one of the four requirements of section 946.6, subdivision (c) is met.” (*Spencer v. Merced County Office of Education* (1997) 59 Cal.App.4th 1429, 1434–1435.) “However, ‘[f]iling a late-claim application within one year after the accrual of a cause of action is a jurisdictional prerequisite to a claim-relief petition. [Citation.] When the underlying application to file a late claim is filed more than one year after the accrual of the cause of action, the court is without jurisdiction to grant relief under . . . section 946.6.” (*J.J. v. County of San Diego, supra*, 223 Cal.App.4th at p. 1221; see *City of Los Angeles v. Superior Court* (1993) 14 Cal.App.4th 621, 627–628.)

The trial court found, based on the allegations of Teter’s petition, that Teter’s damage claim for loss of his personal property accrued not later than September 14, 2013. While Teter’s exhibit copy of his November 24, 2014 letter to the Sheriff is less than clear as to the date he discovered loss of the dental plate, his handwritten statement indicates his personal property was returned shortly after his arrival at San Quentin on September 12, 2013, and his April 2015 claim unequivocally identified the date of discovery of his loss as “Sept.14, 2013.” Teter’s Application was indisputably tendered to the County on or about May 19, 2015. It was Teter’s Application, and not the claim, that was under review by the trial court. (*Rason v. Santa Barbara City Housing Authority, supra*, 201 Cal.App.3d at p. 827 [timeliness of claim is “not within the scope of the proceeding”].) The Application was, without question, filed well over a year and a half after accrual of Teter’s cause of action, and the trial court was without jurisdiction to entertain the petition.

### **III. DISPOSITION**

The judgment of dismissal is affirmed.

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BRUINIERS, J.

WE CONCUR:

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SIMONS, Acting P. J.

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NEEDHAM, J.